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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,210	07/16/2001	Mario Paleari	D-42992-01	4321

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CRYOVAC, INC.
SEALED AIR CORP
P.O. BOX 464
DUNCAN, SC 29334

EXAMINER
PATTERSON, MARC A

ART UNIT	PAPER NUMBER
1772	6

DATE MAILED: 08/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

mk-6

Office Acti n Summary	Application No.	Applicant(s)	
	09/807,210	PALEARI ET AL.	
	Examiner	Art Unit	
	Marc A Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The symbol '>' is indefinite, as the symbol has not been defined. For purposes of examination, the symbol will be assumed to mean 'greater than.' The abbreviation 'PVDC' is indefinite, as it has not been defined. For purposes of examination, the abbreviation will be assumed to mean 'polyvinylidene chloride.'

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'preferably of from 180 to 240 degrees Celsius, more preferably of from of from 185 to 230 degrees Celsius, and still more preferably from 188 to 225 degrees Celsius' is indefinite, as it is unclear whether the ranges are being claimed. For purposes of examination, it will be assumed that the ranges are not being claimed.

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'from 188 to 225 degrees Celsius' is indefinite, as it is indefinite in Claim 2 as stated above. The phrase '(modified polyamide 6)' is indefinite as it is in parentheses, and it

is unclear how the phrase relates to the phrase 'polyamide 6 copolymers.' The phrase 'preferably less than 4%, and even more preferably less than 3% by weight of an aromatic co – monomer' is indefinite because it is unclear whether the ranges are being claimed. For purposes of examination, it will be assumed that the ranges are not being claimed. The phrase 'partially aromatic' is indefinite, as its meaning is unclear. The phrase 'terpolyamides based on polyamide 6, polyamide 11 and polyamide 66' is indefinite because its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'terpolyamides comprising polyamide 6, polyamide 11 and polyamide 66.'

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'and preferably at least 60%' is indefinite because it is unclear whether 60% is being claimed. For purposes of examination, it will be assumed that 60% is not being claimed.

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'preferably between 5 and 35%, and even more preferably between 10 and 30%' is indefinite because it is unclear whether the ranges are being claimed. For purposes of examination, it will be assumed that the ranges are not being claimed.

7. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'preferably less than 130 degrees Celsius, and more preferably comprised between 80 and 128 degrees Celsius' is indefinite, because it is unclear if the ranges are being claimed. For purposes of examination, it will be assumed that the ranges are not being claimed.

8. Claims 7 – 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'ethylene – (C_4 - C_8)– alpha olefin copolymer' is indefinite, as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean any ethylene – alpha olefin copolymer.

9. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'and preferably a heterogeneous or homogeneous ethylene – (C_4 - C_8)– alpha olefin copolymer' is indefinite if the copolymer is being claimed or not. For purposes of examination, it will be assumed that the copolymer is not being claimed.

10. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term 'seamless' is indefinite as its meaning is unclear.

11. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'by a welding involving the outer heat – sealing layer' is indefinite, as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'by sealing the outer heat – sealing layer.' The term 'whereby' is indefinite, as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'wherein.' Correction and / or clarification is required.

12. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1 – 3 and 6 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Speer et al (U.S. Patent No. 5,350,622).

With regard to Claims 1 – 3, Speer et al disclose a multi – layer heat shrinkable film (column 12, lines 4 – 21) comprising an outer layer heat – sealing layer comprising a polyolefin

(column 11, lines 33 – 40), an outer abuse layer comprising a polyamide (column 12, lines 1 – 3) and an intermediate gas barrier layer comprising polyvinylidene chloride (column 11, lines 67 – 68); with regard to the claimed aspect of the polyamide melting point being greater than 175 degrees Celsius, Speer et al teach the use of nylon 6/12 as the polyamide layer (column 8, lines 5 – 10); a melting point of greater than 175 degrees Celsius is therefore inherent to Speer et al.

With regard to Claims 6 – 8, the heat sealing layer comprises an ethylene – alpha olefin copolymer having a density less than or equal to $0.915g/cm^3$ (low density polyethylene; column 8, lines 49 – 68); the claimed aspect of the melting point being less than 140 degrees Celsius therefore reads on Speer et al.

With regard to Claim 9, the film is in the form of a tubing (column 12, lines 4 – 21) where the heat – sealing layer is the innermost layer of the tube (column 11, lines 54 – 60).

With regard to Claim 10, the film is made into a container (a bag, therefore by welding of the seal layer; column 13, lines 55 – 58) having the sealing layer as the inside layer and the abuse layer as the outside layer (column 11, lines 54 – 60).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claims 4 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al (U.S. Patent No. 5,350,622) in view of Arita et al (U.S. Patent No. 4,652,490).

Speer et al disclose a heat shrinkable film comprising an outer polyamide layer as discussed above. With regard to Claims 4, Speer et al fail to disclose a polyamide layer which is blended with ethylene – vinyl alcohol.

Arita et al teach that polyamide blended with ethylene – vinyl alcohol is equivalent to polyamide as a layer in a heat – shrinkable film (column 2, lines 30 – 52) for the purpose of making a film having superior heat – shrinkability (column 2, lines 16 – 20).

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a polyamide layer which is blended with ethylene – vinyl alcohol in Speer et al in order to make a film having superior heat – shrinkability as taught by Arita et al.

With regard to Claim 5, Arita et al fail to teach a blend comprising 3 – 40% ethylene – vinyl alcohol by weight. However, Arita et al teach a blend comprising 1% ethylene – vinyl alcohol by weight (the polyamide is blended with ethylene – vinyl alcohol; column 2, lines 30 – 52). Therefore, the amount of ethylene – vinyl alcohol would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the amount of ethylene – vinyl alcohol, since the amount of ethylene – vinyl alcohol would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Arita et al *In re Boesch and Slaney, 205 USPQ 215 (CCPA 1980).*

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.
Art Unit 1772

NASSER AHMAD
PRIMARY EXAMINER
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